

MEMORANDUM

July 27, 2012

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

MP Mike Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 24-12, Board of Investment Trustees – Consolidated Retiree Health Trust Board of Trustees – Delegation - Attendance

Bill 24-12, Board of Investment Trustees – Consolidated Retiree Health Trust Board of Trustees – Delegation - Attendance, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on July 31, 2012. A public hearing is tentatively scheduled for September 18 at 1:30 p.m.

Bill 24-12 would amend the County's retirement law to allow the Board of Investment Trustees, which oversees the investment programs for the County's Employee Retirement Plans, including the Employees' Retirement System, Retirement Savings Plan and the Deferred Compensation Plan, to delegate certain duties as it deems appropriate and consistent with its fiduciary duties and its written policies and procedures.

This packet contains:

Bill 24-12

Legislative Request Report

Transmittal Memo from County Executive

Circle #

1

5

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Bill No. 24-12
Concerning: Board of Investment
Trustees - Consolidated Retiree
Health Trust Board of Trustees -
Delegation - Attendance
Revised: July 16, 2012 Draft No. 1
Introduced: July 31, 2012
Expires: January 31, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) authorize the Board of Investment Trustees to adopt written policies and procedures to delegate certain duties;
- (2) modify the laws concerning excused absences for a member of the Board of Investment Trustees;
- (3) modify the laws concerning excused absences for a member of the Consolidated Retiree Health Trust Board of Trustees;
- (4) generally amend the law regarding the Employees' Retirement System, Retirement Savings Plan and Deferred Compensation Plan; and
- (5) generally amend the law regarding the Consolidated Retiree Health Benefits Trust Fund.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-59, 33-60, 33-125, 33-145, and 33-160

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-59, 33-60, 33-125, 33-145, and 33-160 are amended as follows:

33-59. Board of investment trustees.

* * *

(c) Vacancies.

(1) A trustee [who is absent from more than 25 percent of the scheduled meetings of the Board during any 12-month period has resigned from the Board. Scheduled meetings mean meetings held at least 7 days after notice of the meeting.] may be automatically removed for missing meetings as described in Section 2-148(b).

* * *

(f) Written policies.

(1) The Board must establish written policies to administer and invest the funds created by this Article and to transact the business of the trust and the retirement system.

(2) The Board must apply the policies to all members and beneficiaries of the retirement system and must not discriminate in favor of or against any member or beneficiary of the retirement system.

(3) Any delegation of duties by the Board under Sections 33-60, 33-125 or 33-145 must be specified in written policies and procedures.

(g) Officers. The Board must select a chair, vice chair, and secretary from the Board's members.

(1) The chair must preside at meetings of the Board and may take administrative action [, including executing an instrument,] on

behalf of the Board. [A person may rely in good faith on an act of the chair as legally valid.]

(2) The vice chair must perform the duties and exercise the powers of the chair when the chair is [absent from the County or disabled] unavailable, or the Board determines is otherwise unable to perform the duties of the chair.

(3) The secretary must record the proceedings and actions of the Board and may certify a document or action of the Board. A person may rely in good faith on the secretary's certification as proof of the document or action.

(h) *Meetings and actions.*

* * *

[(5) The Board may authorize a trustee to execute instruments on behalf of the Board. The authority must be in writing and specifically describe the instrument and how the trustee must execute the instrument.]

* * *

33-60. The board of investment trustees-Powers and duties.

* * *

(i) Delegation of duties. The Board may delegate its duties to the Executive Director or a similarly situated County employee as it deems appropriate and consistent with its fiduciary duties in a written policy and procedure. If the Board has prudently delegated its duties and monitored the delegation, the trustees must not be liable for an act or omission made by its delegate.

33-125. Powers and duties of the Board.

* * *

(i) Delegation of duties. The Board may delegate its duties to the Executive Director or a similarly situated County employee as it deems appropriate and consistent with its fiduciary duties in a written policy and procedure. If the Board has prudently delegated its duties and monitored the delegation, the trustees must not be liable for an act or omission made by its delegate.

33-145. Powers and duties of the board.

* * *

(j) Delegation of duties. The Board may delegate its duties to the Executive Director or a similarly situated County employee as it deems appropriate and consistent with its fiduciary duties in a written policy and procedure. If the Board has prudently delegated its duties and monitored the delegation, the trustees must not be liable for an act or omission made by its delegate.

33-160. Board of Trustees

* * *

(c) Vacancies.

(1) A trustee [who is absent from more than 25 percent of the scheduled meetings of the Board during any 12-month period has resigned from the Board. Scheduled meetings mean meetings held at least 7 days after notice of the meeting.] may be automatically removed for missing meetings as described in Section 2-148(b).

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LEGISLATIVE REQUEST REPORT

Expedited Bill 24 -12

*Board of Investment Trustees – Consolidated Retiree Health Trust Board of Trustees –
Delegation - Attendance*

DESCRIPTION: The Bill amends the County's retirement law to allow the Board of Investment Trustees, which oversees the investment programs for the County's Employee Retirement Plans, including the Employees' Retirement System, Retirement Savings Plan and the Deferred Compensation Plan, to delegate certain duties as it deems appropriate and consistent with its fiduciary duties and its written policies and procedures.

The Bill also amends the attendance provisions of the Board of Investment Trustees, and the Board of Trustees overseeing the Consolidated Retiree Health Benefits Trust, to make them consistent with those that currently apply under County Code Section 2-148 to all other Boards, Commissions and Committees and bases attendance on the number of missed meetings.

PROBLEM: The Bill would permit the Board of Investment Trustees to delegate certain duties, such as the execution of contracts, if it deems it appropriate and consistent with its fiduciary duties, resulting in a better alignment of the roles and responsibilities of the Board and its Staff in the oversight of the investment programs and to further enhance the efficiency of the operation of the programs.

Section 33-59 (which governs the Board of Investment Trustees) and Section 33-160 (which governs the Board of Trustees for the Consolidated Retiree Health Trust provides that a trustee has resigned for missing more than 25% of scheduled meetings in a 12 month period. While the County Code only requires that the Boards meet four times a year, both Boards currently meet six times a year. The Boards would like to amend the attendance requirements to the provision in County Code Section 2-148 which bases removal on the number of missed meetings.

**GOALS AND
OBJECTIVES:**

The goal of the Bill is to provide the Boards with the necessary authority to meet its fiduciary duties in overseeing the investment programs for the County's retirement plans, and the Consolidated Retiree Health Benefits Trust, in the appropriate manner.

COORDINATION: The Board of Investment Trustees, the Board of Trustees, and the County Attorney's Office have reviewed this Bill.

FISCAL IMPACT: Office of Management and Budget

**ECONOMIC
IMPACT:** Office of Management and Budget

EVALUATION: N/A

**EXPERIENCE
ELSEWHERE:** Numerous other retirement plans, including the Maryland State Retirement and Pension System, currently provide for the Boards, overseeing the investment of retirement trust fund assets, to delegate certain functions to the Executive Director, or other staff, if such delegation is established in policies and procedures. The County's Chief Administrative Officer, in his role as Plan Administrator, currently has the authority within the Code to delegate his duties.

**SOURCE OF
INFORMATION:** Linda Herman, Board of Investment Trustees, Board of Trustees
Amy Moskowitz, Office of the County Attorney
Morgan Lewis, outside legal counsel for the Board of Investment Trustees

**APPLICATION
WITHIN
MUNICIPALITIES:**N/A


PENALTIES: N/A

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850Isiah Leggett
County Executive

July 5, 2012

069243

TO: Roger Berliner, President
County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Expedited Legislation - Board of Investment Trustees and Board of Trustees for
the Consolidated Retiree Health Trust

RECEIVED
MONTGOMERY COUNTY

2012 JUL -5 PM 2:33

I am attaching for the Council's consideration a bill that would amend the County's retirement law to allow the Board of Investment Trustees, which oversees the investment programs for the County's Employee Retirement Plans, including the Employees' Retirement System, Retirement Savings Plan and the Deferred Compensation Plan, to delegate certain duties as it deems appropriate and consistent with its fiduciary duties and its written policies and procedures.

The County Code establishes the Board of Investment Trustees in Section 33-59 and provides the Board the power to invest the assets of the retirement system, authority to direct the payment of benefits, and describes other actions to be taken in Sections 33-60 and 33-61. The Board has been advised by its legal counsel that the delegation of its duties is permitted under common law. However, the Board's legal counsel has advised it that the delegation authority should be provided in its governing document, the County Code. Numerous retirement plans, including the Maryland State Retirement and Pension System, currently provide for the Boards overseeing the investment of retirement trust fund assets to delegate certain functions to staff. This bill would allow for a similar delegation of duties as the Board deems appropriate and consistent with its fiduciary duties and its written policies and procedures.

The bill also changes the attendance requirements for both the Board of Investment Trustees and the Board of Trustees which oversees the assets of the Consolidated Retiree Health Benefits Trust to make them consistent with those that currently apply under County Code Section 2-148 to all other County Boards, Commissions and Committees.

Section 33-59 (which governs the Board of Investment Trustees) and Section 33-160 (which governs the Board of Trustees) provide that a trustee has automatically resigned when the trustee misses more than 25% of the scheduled meetings. While the County Code only requires that the Boards meet four times a year, each Board currently meets six times a year. The Boards would like to amend the attendance requirements to mirror the provision in County Code Section 2-148 which applies to all other County Boards, Commissions and Committees and bases attendance on the number of missed meetings.

Thank you for your prompt consideration of this bill.

Attachments